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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL P. GOODMAN,

Plaintiff,

-v -

GILA GOODMAN *also known as* GILA DWECK
also known as GILA DABAH, and JANE DOE 1-20

Defendants.

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GREGORY H. WOODS, United States District Judge:

1:21-cv-10902-GHW

ORDER

On December 21, 2022, the Honorable Robert W. Lehrburger issued a Report and Recommendation (the “R&R”) recommending that the Court grant in part and deny in part Defendant Gila Goodman’s motion to dismiss the complaint or, in the alternative, to stay the proceedings. Dkt. No. 35 at 54. The R&R describes in detail the facts and procedural history of this case.

When a party timely objects to a magistrate’s report and recommendation, a district court reviews *de novo* “those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). But where “the party makes only frivolous, conclusory or general objections, or simply reiterates her original arguments, the Court reviews the report and recommendation only for clear error.” *Chen v. New Trend Apparel, Inc.*, 8 F. Supp. 3d 406, 416 (S.D.N.Y. 2014) (quoting *Silva v. Peninsula Hotel*, 509 F. Supp. 2d 364, 366 (S.D.N.Y. 2007)). “Further, the objections ‘must be specific and clearly aimed at particular findings in the magistrate judge’s proposal.’” *McDonagh v. Astrue*, 672 F. Supp. 2d 542, 547 (S.D.N.Y. 2009) (quoting *Molefe v. KLM Royal Dutch Airlines*, 602 F. Supp. 2d 485, 487 (S.D.N.Y. 2009)). The Court also reviews for

clear error those parts of the report and recommendation to which no party has timely objected.

Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); 28 U.S.C. § 636(b)(1)(A).

Plaintiff filed timely objections to the R&R (the “Objections”). Dkt. No. 37. Plaintiff objected to three specific conclusions in the R&R:

- 1) The Magistrate erred as a matter of law in holding that Plaintiff failed to sufficiently plead a claim under the Computer Fraud and Abuse Act (“CFAA”) because he failed to sufficiently allege his “losses.”
- 2) The Magistrate erred as a matter of law in holding that Plaintiff failed to sufficiently plead a claim under the Electronic Communications Privacy Act (“ECPA”) because he failed to plausibly allege the element of “contemporaneous interception” of email.
- 3) The Magistrate erred in declining to allow the Plaintiff to re-plead the complaint, especially to decline revisions that might better specify the alleged losses in the CFAA claim.

Objections at 2. Defendant filed her response to the Objections on February 2, 2023 (the “Response”). Dkt. No. 45.

The Court has reviewed those aspects of the R&R that were not the subject of any objection for clear error and finds none. *See Braunstein v. Barber*, No. 06-cv-5978, 2009 WL 1542707, at *1 (S.D.N.Y. June 2, 2009) (explaining that a “district court may adopt those portions of a report and recommendation to which no objections have been made, as long as no clear error is apparent from the face of the record.”).

Moreover, the Court has reviewed *de novo* those aspects of the R&R that were the subject of objections. Having reviewed the record, the parties’ submissions in connection with the Defendant’s motion to dismiss, the R&R, the Objections and the Response, the Court agrees with Judge Lehrburger’s thoughtful and well-reasoned analysis and conclusions in full and therefore adopts the R&R in its entirety.


For the reasons articulated in the R&R, Defendant’s motion to dismiss the complaint is GRANTED in part and DENIED in part as follows: (1) Plaintiff’s claim under the Computer Fraud and Abuse Act is dismissed with prejudice; (2) Plaintiff’s claim under the Stored

Communications Act is dismissed with prejudice; (3) Plaintiff's claim under the Electronic Communications Protection Act (the "ECPA") with respect to Plaintiff's password-protected HP Pavilion All-in-One Computer and Plaintiff's emails is dismissed with prejudice, (4) Plaintiff's claim under EPCA regarding the June 5, 2020 recording of Plaintiff's phone calls is not dismissed; and (5) Plaintiff's state law claims are dismissed without prejudice.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 26.

SO ORDERED.

Dated: February 12, 2023
New York, New York



GREGORY H. WOODS
United States District Judge